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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92048989
Party	Defendant Van Nelle Tabak Nederland BV
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Submission	Other Motions/Papers
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Date	06/24/2008
Attachments	062408 Consent Motion.pdf (17 pages)(505573 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

TOP TOBACCO, L.P.)

Cancellation No. 92048989

Petitioner,)

v.)

VAN NELLE TABAK NEDERLAND, BV)

Respondent.)

CONSENTED MOTION FOR ENTRY OF STIPULATED PROTECTIVE ORDER

Respondent, Van Nelle Tabak Nederland, BV, with the consent of Petitioner, Top Tobacco, L.P., submits herewith for entry in the above-captioned Cancellation Proceeding, the Stipulated Protective Order attached hereto as Exhibit A. The parties have agreed to proceed pursuant to the attached Stipulated Protective Order in lieu of the Board's standard protective order as provided by the recently adopted Trademark Rules of Practice.

Counsel for Petitioner consented to this filing by email correspondence dated June 18, 2008.

Dated: June 24, 2008

STITES & HARBISON, PLLC
Attorneys for Respondent

By: s/ Brewster Taylor
Brewster Taylor
1199 North Fairfax St.
Suite 900
Alexandria, VA 22314-1437
(703) 739-4900

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Respondent's First Set of Interrogatories to Petitioner was *mailed via first class mail*, postage prepaid, to counsel for Petitioner, Antony J. McShane, Esquire, Lara V. Hirshfeld, Esquire and Gregory J. Leighton, Esquire, NEAL, GERBER & EISENBERG LLP, Two North LaSalle Street, Chicago, Illinois 60602-3801, on this the **24th day of June 2008**.

s/ Brewster Taylor
Brewster Taylor

308LT:20399:66401:1:ALEXANDRIA

EXHIBIT A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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TOP TOBACCO, L.P.)

Cancellation No. 92048989

Petitioner,)

v.)

VAN NELLE TABAK NEDERLAND, BV)

Respondent.)

PROTECTIVE ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the parties, that, pursuant to § 2.125(e), Trademark Rules of Practice, and Rule 26(c). Fed. R. Civ. P., during the course of this action, with respect to any documents or information received by any party to this action in response to any document request, interrogatory, deposition or otherwise which contains or comprises confidential or proprietary information, the following procedures shall be employed and the following restrictions shall govern:

1. Any document, response to interrogatory, deposition transcript or portion of a deposition transcript, response to requests for admission or other material or portion thereof (hereinafter collectively "MATERIAL,") believed, in good faith, by the party producing the MATERIAL to contain information which such party, in good faith, has reason to believe is not known or available to the public, and which information such party believes to constitute proprietary, confidential and/or trade secret information relating to the producing party's business may, at the time of its initial disclosure, be designated by the producing party to be either (i) "CONFIDENTIAL MATERIAL" or (ii) "HIGHLY CONFIDENTIAL/ATTORNEY'S

EYE'S ONLY MATERIAL", within the terms of this Protective Order by stamping or otherwise marking the MATERIAL with the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY" (hereinafter "LEGEND"), whichever LEGEND is appropriate.

2. Any deposition transcript or trial testimony or portion thereof designated as CONFIDENTIAL MATERIAL, or HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL, is to be bound separately by the Court Reporter, and any responses to interrogatories, document requests, or requests for admission designated as CONFIDENTIAL MATERIAL or HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL are to be served separately. The designation of CONFIDENTIAL MATERIAL, or HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL regarding information and/or testimony contained in a deposition or in trial testimony may be made at the time of the deposition or testimony or by written notification of the adverse party within fourteen (14) days of receipt of the deposition transcript or trial testimony transcript of those portions of the transcript containing CONFIDENTIAL MATERIAL or HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL. Notwithstanding the foregoing, for transcripts of depositions that occurred prior to the effective date of this Order, those portions of testimony that were identified during the deposition as being confidential shall be deemed to be subject to this Order without any further designation or other action.

CONFIDENTIAL MATERIAL

3. MATERIAL designated as CONFIDENTIAL MATERIAL and all copies, abstracts, summaries or information derived therefrom, and all notes or other records regarding the contents thereof shall be maintained in confidence by the person to whom such materials are produced or disclosed, and shall not be disclosed to any person except:

(A) outside counsel of record to the parties to this proceeding, and the legal associates and clerical and other support staff who are employed by such counsel and who are actually involved in assisting counsel in the prosecution or defense of this action;

(B) the Board, any subsequent Appellate body to whom an appeal is taken in this matter, and any Court before whom a dispute concerning this agreement or its enforcement is brought;

(C) court reporters and/or videographers and necessary support personnel of such court reporters and/or videographers retained in connection with any hearing or trial of this opposition or in connection with any depositions taken by any party in this opposition to the extent necessary to transcribe and/or record the deposition testimony and identify exhibits marked in the course of the deposition;

(D) in-house counsel and those directors, officers, trustees and employees of the parties who are actually involved in assisting counsel in the prosecution or defense of this action;

(E) independent experts and their employees retained by any of the parties to this action or their counsel who are assisting counsel in the prosecution or defense of this action;

(F) independent opposition support services, including legal interpreters, document reproduction services, computer imaging services, and demonstrative exhibit services, provided such individuals are merely performing clerical or ministerial tasks;

(G) individuals who authored, or, prior to the commencement of this opposition, received, the designated document or material;

(H) mock jurors and focus group members selected by trial consultants, jury consultants or by Counsel in preparation for trial; however, no documents or physical things

embodying CONFIDENTIAL INFORMATION of another party shall be left in the possession or any such person; and

(I) any other person agreed to by the parties or allowed by the Board. CONFIDENTIAL MATERIAL, and any information contained in any CONFIDENTIAL MATERIAL, shall not be made available to, or in any manner revealed to or discussed with, anyone except as provided above in this paragraph 3. This provision pertains to disclosure by the party receiving CONFIDENTIAL MATERIAL and does not limit the disclosure of CONFIDENTIAL MATERIAL by the producing party.

HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL

4. MATERIAL that the disclosing party has reason to believe, in good faith, consists of or contains especially sensitive information, including but not limited to, sales, marketing, and business strategy and planning information and design or technical data, may be designated HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL. All HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL, and all copies, abstracts, summaries or information derived therefrom, and all notes or other records regarding the contents thereof, shall be maintained in confidence by the person to whom such materials are produced or disclosed, and shall not be disclosed to any person except:

(A) outside counsel of record to the parties to this proceeding, and the legal associates and clerical and other support staff who are employed by such counsel and who are actually involved in assisting counsel in the prosecution or defense of this action:

(B) the Board, any subsequent Appellate body to whom an appeal is taken in this matter, and any Court before whom a dispute concerning this agreement or its enforcement is brought;

(C) court reporters and/or videographers and necessary support personnel of such court reporters and/or videographers retained in connection with any hearing or trial of this opposition or in connection with any depositions taken by any party in this opposition to the extent necessary to transcribe and/or record the deposition testimony and identify exhibits marked in the course of the deposition;

(D) independent experts and their employees retained by any of the parties to this action or their counsel who are assisting counsel in the prosecution or defense of this action;

(E) independent opposition support services, including legal interpreters, document reproduction services, computer imaging services, and demonstrative exhibit services, provided such individuals are merely performing clerical or ministerial tasks;

(F) individuals who authored, or, prior to the commencement of this opposition, received, the designated document or material; and

(G) any other person agreed to by the parties or allowed by the Board. HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL, and any information contained in any HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL, shall be deemed for ATTORNEY'S EYES ONLY and, except as provided above in this paragraph 4, shall not be made available to, or in any manner revealed to or discussed with, anyone, including the receiving attorney's client(s) or any of the client(s)' employees. This provision pertains to disclosure by the party receiving HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL and does not limit the disclosure of HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL by the producing party.

5. All CONFIDENTIAL MATERIAL, and HIGHLY CONFIDENTIAL/ ATTORNEY'S EYES ONLY MATERIAL shall be used solely for purposes of this proceeding

and any appeal taken in this proceeding and for no other purpose, and persons having access to CONFIDENTIAL MATERIAL and/or HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL shall not disclose or provide such information to any person not authorized to receive the same under this Protective Order.

6. Before CONFIDENTIAL MATERIAL or HIGHLY CONFIDENTIAL/ ATTORNEY'S EYES ONLY MATERIAL is disclosed to any persons identified, respectively, in categories (D) or (E) of paragraph 3 or categories (D) or (E) of paragraph 4 above, each such person shall signify assent to the terms of this Protective Order by executing, prior to receipt of such CONFIDENTIAL MATERIAL, or HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL, whichever is applicable, an acknowledgment statement (in the form attached hereto) which indicates that he or she has read this Protective Order and agrees to be bound in all respects by its terms.

7. Counsel for the receiving party shall not disclose any CONFIDENTIAL MATERIAL and HIGHLY CONFIDENTIAL/ ATTORNEY'S EYES ONLY MATERIAL of the producing party to any person associated with the receiving party except as expressly provided in paragraphs 3 and 4 of this Protective Order.

ATTORNEY-CLIENT PRIVILEGE/WORK PRODUCT PROTECTED MATERIAL

8. (A) The inadvertent delivery by the disclosing party of documents, transcripts or any other materials to the receiving party containing information for which a claim of attorney-client privilege or attorney work product protection might have been made by the disclosing party, shall not be considered a waiver of such privilege or protection and is without prejudice to the right of the disclosing party to claim attorney-client privilege or attorney work product protection for such information and to request that such materials be returned to the disclosing party; provided that the disclosing party makes such a claim and request within thirty

(30) days of learning of the inadvertent delivery. Upon receiving such a claim and request from the disclosing party, the receiving party shall promptly return the attorney-client privileged or attorney work product protected materials, shall destroy any copies of such materials that have been made and whether still in its possession or not, purge such materials from its electronic databases, if any, and shall not use the inadvertent delivery of such materials as a basis for claiming a waiver.

(B) In the event of any dispute with respect to whether any particular document, transcript or other material so inadvertently delivered is covered by attorney-client privilege or work product protection, the disclosing party must notify counsel for the receiving party in writing of the nature of the dispute, including specifically identifying the material at issue. The parties shall then meet and confer in good faith as to whether such material is privileged or work product protected. If the parties are unable to reach agreement, the receiving party within twenty (20) days after the parties have met and conferred, may file a motion for an appropriate order from the Board and may keep and make such copies of the material in dispute as necessary so that the receiving party may make such motion. Any such motion and the material in dispute shall be filed under seal with the Board. At any hearing or briefing on the issue of whether such material is privileged or work product protected, the disclosing party shall have the burden of establishing whether the material is covered by privilege or work product protection. In the meantime, the material in dispute shall be treated as privileged or work product protected until the issue is resolved by the Board or the parties agree to a resolution of the dispute in writing which alters the designation of such privilege or work product protection, and while the dispute is pending all copies of the documents at issue (except for the copies

necessary to make a motion to the Board for an appropriate order) shall be returned to the disclosing party or destroyed.

GENERAL PROVISIONS

9. If any CONFIDENTIAL MATERIAL or HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL is summarized, discussed or otherwise used at any deposition, hearing, or the trial of this action, all persons other than stenographic personnel and those authorized hereunder to have access to the same, shall be excluded from such portion of the deposition, hearing, or trial of this action, unless the parties otherwise agree or the Board otherwise orders.

10. Any CONFIDENTIAL MATERIAL or HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL filed with the Board shall be submitted separately and under seal and marked as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY", bearing the proceeding number, unless and until the parties otherwise agree or the Board otherwise orders.

11. Once participation in this action by any person obtaining such CONFIDENTIAL MATERIAL and/or HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL pursuant to paragraph 3 or paragraph 4 above, whichever is applicable, has terminated or otherwise concluded, all CONFIDENTIAL MATERIAL and HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL in his or her possession shall be returned within thirty (30) days of written request therefore to counsel with whom he or she was associated or affiliated or from whom such person otherwise obtained such CONFIDENTIAL MATERIAL or HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL.

12. Upon final disposition of this action, all CONFIDENTIAL MATERIAL, and HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL held by the receiving

party shall be returned to the producing party (or, at the producing party's instruction, destroyed) except for one copy, and except for any abstracts or summaries or other memoranda prepared by the persons identified in paragraph 3 or paragraph 4 above who obtained the CONFIDENTIAL MATERIAL or HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL and any part of the official record which is or contains CONFIDENTIAL MATERIAL and/or HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL. The parties agree that all retained CONFIDENTIAL MATERIAL and/or HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL, and any information contained therein, will continue to be treated as provided in this Protective Order and that such continuing obligation shall survive the final disposition of this action.

13. The restrictions set forth in the preceding paragraphs shall not apply to materials and information which, at or prior to disclosure thereof in this action, were known or had been independently developed by the discovering party or were public knowledge, or which, after disclosure thereof, become public knowledge other than by act or omission of the non-designating party, or its agents, experts and attorneys. No party hereto shall be bound by this stipulation and order as to any information which is possessed prior to this action, unless that information was obtained under circumstances requiring its treatment as confidential.

14. Nothing in this Order shall bar or otherwise restrict any attorney from rendering advice to his client with respect to this action, and in the course thereof, from generally referring to or relying upon the examination of documents produced or information revealed in deposition or trial transcripts. In rendering such advice or in otherwise communicating with his or her client, the attorney shall not disclose the specific content of any document or information

designated as CONFIDENTIAL MATERIAL or HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY by a producing party.

15. The parties will use reasonable care to avoid designating any documents or information as CONFIDENTIAL MATERIAL or HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL, which contains knowledge generally available to the public.

16. Notwithstanding the foregoing, this Order shall be without prejudice to the right of any party to object to the production or inspection of any MATERIAL upon any other appropriate ground, and nothing contained herein shall be construed as a waiver of any objections which might be raised as to the admissibility in the relevant proceeding of any evidentiary MATERIAL. Furthermore, this Order shall not foreclose the parties from challenging, in good faith, in writing that MATERIAL labeled "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY" in accordance with the provisions of this Protective Order is, in fact, not confidential or highly confidential. If the parties are unable to agree within ten (10) business days whether or not such MATERIAL is confidential or highly confidential, whichever is applicable, the party challenging the designation of such MATERIAL as confidential or highly confidential shall move for an order from the Board that such MATERIAL is not CONFIDENTIAL MATERIAL or HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL.

17. A failure of any party to challenge expressly the designation of any material as CONFIDENTIAL MATERIAL or HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL under this Order shall not be deemed as an admission that such material or any information contained herein is in fact non-public.

18. Failure of counsel to designate and/or mark any document, thing or testimony as CONFIDENTIAL INFORMATION or as HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY MATERIAL as provided above shall not preclude the disclosing party from thereafter in good faith making such a designation and requesting the receiving party to so mark and treat such documents and things so designated. After such designation, such documents and things shall be fully subject to this Protective Order and treated thereafter according to the new or corrected designation. The receiving party, however, shall incur no liability for disclosures made prior to notice of such designations.

19. This Order is without prejudice to the right of any party to seek relief from the Board, upon good cause shown, from any of the restrictions provided above or for any other grounds provided by applicable law.

20. This Protective Order may be amended without leave of the Board by the agreement of counsel for the parties in the form of a Stipulation that shall be filed in this action.

21. Nothing in this Protective Order shall constitute:

(A) an agreement by the parties to produce any documents or supply any information or testimony in discovery not otherwise agreed upon or required by order of the Board;

(B) a waiver by any person or party of any right to object to or seek a further protective order with respect to any discovery request in this action; or

(C) a waiver of any claim of immunity or privilege with regard to any testimony, documents or information.

22. This Order may be executed in multiple counterparts.

Dated: June ___, 2008

STITES & HARBISON, PLLC
Attorneys for Respondent

By: _____
Brewster Taylor
1199 North Fairfax St.
Suite 900
Alexandria, VA 22314-1437
(703) 739-4900

Dated: June ___, 2008

NEAL, GERBER & EISENBERG LLP
Attorneys for Petitioner

By: _____
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

TOP TOBACCO, L.P.,)

Petitioner,)

v.)

Cancellation No. 92048989

VAN NELLE TABAK NEDERLAND, BV)

Respondent.)

The undersigned hereby acknowledges that he/she/they has/have each read the Protective Order in the above-referenced proceeding, a fully executed copy of which attached hereto; that he/she/they understand(s) the terms thereof; that he/she/they agree(s) to be bound by its terms; and that he/she/they consent(s) to the jurisdiction of the United States District Court for the _____ District of _____ or, if unavailable, the State Courts of _____, _____, in all matters concerning this Protective Order, including but not limited to the interpretation and enforcement thereof.

Name:

Address:

Employer or Business Affiliation:

Title:

Date: